

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JAMES HUGHES et al.,

Plaintiff,

v.

AMERICAN STRATEGIC INSURANCE  
CORP et al.,

Defendant.

CASE NO. 3:24-cv-05114-DGE

ORDER ON MOTIONS FOR  
SUMMARY JUDGMENT (DKT.  
NOS. 13, 17)

**I INTRODUCTION**

This matter comes before the Court on Plaintiffs’ motion for partial summary judgment (Dkt. No. 13) and Defendants’ motion for summary judgment (Dkt. No. 17). Having reviewed the Parties’ briefing and the remainder of the record in full, the Court GRANTS Defendants’ motion and DENIES Plaintiffs’ motion for the foregoing reasons.

**II BACKGROUND**

**A. Factual Background**

1 This is an insurance coverage dispute arising from a fire that occurred at 8301 Northeast  
2 71<sup>st</sup> Street, Vancouver, Washington—the residential property of Plaintiffs James Hughes and  
3 Dena Hughes. Plaintiffs purchased a homeowners insurance policy, subject policy WA118833,  
4 covering the property from Defendant American Strategic Insurance Corporation (“ASI”) on  
5 September 14, 2020. (Dkt. No. 19 at 1–2.) At that time, the property was under a mortgage loan  
6 with Columbia Credit Union (“CCU”) and the taxes and insurance for the home were paid out of  
7 an escrow account. (Dkt. No 18-1 at 2–4.) Plaintiffs finished paying off the mortgage in July of  
8 2021, at which point the escrow account was closed. (*Id.*) However, CCU was not removed as a  
9 “mortgagee” from ASI’s account profile for Plaintiffs’ policy; accordingly, notifications about  
10 Plaintiffs’ insurance policy continued to be sent to CCU and the Plaintiffs themselves. (Dkt. No.  
11 19 at 2.) Nonetheless, Plaintiffs understood they would be responsible for paying for the  
12 insurance and taxes on the property after the escrow account was closed. (Dkt. No. 18-1 at 5.)  
13 On September 14, 2021, Plaintiffs paid to renew the insurance for the policy period of September  
14 14, 2021, through September 14, 2022, by making a credit card payment. (Dkt. No. 19-6 at 1.)

15 In December of 2021, Plaintiffs opened a Home Equity Line of Credit (“HELOC”) from  
16 CCU. (Dkt. No. 18-1 at 5.) Plaintiffs signed an “Agreement to Provide Property Insurance”  
17 with CCU that listed the subject policy, WA118833, as the insurance covering the property.  
18 (Dkt. No. 18-3 at 1.) CCU subsequently reached out to ASI on December 13, 2021, in a letter  
19 entitled “Hughes mortgagee clause change request.” (Dkt. No. 19-1 at 1.) CCU requested that  
20 ASI “add Columbia Credit Union on as a 2ND Mortgage Position (no escrow)” to the Plaintiffs’  
21 insurance policy. (Dkt. No 19-1 at 1–2.) CCU did not request that the first mortgage, which all  
22 Parties agree had already been paid off, be removed. (*Id.*) ASI added CCU as requested;  
23  
24

1 accordingly, Plaintiffs account profile with ASI listed two mortgages against the property when  
2 in fact there was no mortgage against the property. (Dkt. No. 19 at 2.)

3 Mr. Hughes was the member of the couple who “handled” insurance payments. (Dkt.  
4 No. 18-1 at 2.) When Plaintiffs first opened the policy, Mr. Hughes registered for an online  
5 account with ASI using his personal email address. (Dkt. No. 19 at 3.) He then signed up to use  
6 ASI’s “electronic signature process” and was presented with a message that required him to  
7 check a box stating, “I agree to conduct this transaction for [policy number] electronically  
8 pursuant to the terms & conditions.” (*Id.*) The words “terms and conditions” appeared in bolded  
9 blue letters and were hyperlinked:

15 (*Id.*) If clicked, the hyperlink displayed the following text:

16 Your consent to receive insurance policy documents electronically applies to this  
17 transaction and any communications related thereto. You agree to ensure all information  
18 needed to contact you electronically is current and up to date. You understand that you  
19 must have a computer and access to e-mail in order to conduct this transaction and future  
20 transactions electronically. You have the right to withdraw your consent to receive  
21 insurance policy documents electronically and may do so by contacting your agent. You  
22 have the right to request a non-electronic, paper copy of insurance policy documents at  
23 any time.

24 (*Id.*) In order to finish registering for the electronic signature process, applicants must check the  
box agreeing to the terms and conditions (*see supra*) and verify their password. (*Id.*) According  
to ASI's data records, Mr. Hughes completed the electronic signature process at 7:16 P.M. on

1 September 13, 2020. (Dkt. No. 19-5 at 1.) He subsequently received insurance policy  
2 documents at the email address he provided in the online portal.

3 The renewal payment deadline for the policy period of September 14, 2022, to September  
4 14, 2023, was on September 14, 2022. (Dkt. No. 19 at 4.) On July 15, 2022, ASI emailed  
5 Plaintiff a 12-page “renewal offer packet.” (Dkt. No. 19-7 at 1.) The text of the email stated:

6 We attached your current policy documents[,] that’s where you’ll find all your important  
7 policy details, like your coverages, bill plan, and agent information. If your policy is  
8 renewing, you’ll need to make a payment. If your mortgage company pays your  
9 premium, they received this notice as well. Please check with them to learn when the  
10 payment will be made on your behalf. Otherwise, check the first few pages of the  
11 attached document to make sure you’re on track with your payments and other items.

12 (*Id.*) A “Renewal Premium Notice” was contained in the packet attached to the email. In  
13 relevant part, the Notice stated:

14 To accept this renewal offer and maintain your coverage, please pay the minimum  
15 amount due shown below. If your premium is paid by your mortgage company a copy of  
16 this invoice has been sent to your mortgagee listed on your Declarations page. If the  
17 information for your mortgagee is incorrect please contact your agent to update it.

18 (Dkt. No. 19-8 at 7.) The Notice listed “total amount due” as \$1,471.00 and listed September 14,  
19 2020, as the “due date.” (*Id.*)

20 Three days later, on July 18, 2022, Plaintiff received an email from Progressive Customer  
21 Service (“Progressive”)—the insurance agent, a separate entity from Defendant ASI. The  
22 subject of the email read “Your renewal is on the horizon.” (Dkt. No. 15 at 17.) The text of the  
23 email stated: “Your homeowner policy renewal period is starting soon. Because you pay  
24 insurance through your mortgage lender, no action is needed. They also received a bill and will  
pay on your behalf.” (*Id.* at 18.)

Mr. Hughes opened the July 15, 2022, email but did not open the attachment, which  
included the 12-page packet containing the notice. (Dkt. No. 18-1 at 9.) When Mr. Hughes read

1 the email from Progressive, he assumed that it meant CCU would pay on his behalf, believing  
2 that it had resumed paying as a result of Plaintiffs opening the HELOC. (*Id.* at 8; Dkt. No. 18-5  
3 at 3.) He did not check with CCU that they would be making the payment. (*Id.* at 9.) Mrs.  
4 Hughes was not aware of the emails sent to her husband's email address. (Dkt. No. 16 at 2.)

5 On August 30, 2022, ASI delivered a "Courtesy Payment Reminder" to Plaintiffs'  
6 address by regular mail. (Dkt. No. 19-9 at 1.) The top of the letter stated, "Notice of Policy  
7 Expiration Renewal Premium Due." (*Id.*) The text of the letter read:

8 We recently sent a renewal offer for your insurance policy but haven't received your  
9 renewal payment yet. To maintain your coverage, please make your payment by the due  
10 date shown above. Keep in mind that if we don't receive your payment by this date, your  
11 policy will expire, and you'll no longer have coverage.

12 (*Id.*) Mr. Hughes does not remember receiving or opening the letter. (Dkt. No. 18-1 at 13.)

13 Likewise, Mrs. Hughes does not remember receiving or opening the letter. (Dkt. No. 16 at 2.)

14 Plaintiffs did not pay the renewal by September 14, 2022, and the policy lapsed. (Dkt.  
15 No. 19 at 5.) On September 23, 2022, ASI sent an email to Mr. Hughes with the subject line  
16 "Important info attached: Please check over your policy documents." (Dkt. No. 19-10 at 1.) The  
17 text of the email did not explain that the policy had lapsed, rather it stated that policy documents  
18 with important details "like your coverages, bill plan, and agent information" were attached to  
19 the email. (*Id.*) One of the attached documents was entitled "Notice of Lapse Nonpayment of  
20 Premium." (Dkt. No. 19-11 at 5.) The Notice of Lapse stated: "Unfortunately, because we didn't  
21 receive the minimum amount due requested in a previous notice, your policy has expired as of  
22 the date shown above." (*Id.*) The letter indicated that coverage had terminated at 12:01 A.M. on  
23 September 14, 2022. (*Id.*) Based on the text of the email, Mr. Hughes "believed that the  
24 attachment only contained policy information," and did not open the attachments. (Dkt. No. 15 at

2.) Accordingly, Plaintiffs were not aware of the document explaining that the policy had lapsed and believed that their home continued to be insured. (*Id.*)

Plaintiffs' house was destroyed by a fire on August 11, 2023. (*Id.*) When Mr. Hughes called to report the claim to insurance on August 12, 2023, he was informed that the policy had lapsed. (Dkt. No. 18-1 at 12.) Plaintiffs allege that they incurred \$500,000 in damages for the loss of the structure, \$200,000 damages in personal property losses, and \$50,000 in additional living expenses. (Dkt. No. 1-1 at 5–6.)

### **B. Procedural History**

Plaintiffs originally brought suit in Clark County Superior Court against ASI and American Strategic Insurance Underwriters Corporation (hereinafter referred to as “Defendants”). (Dkt. No. 1 at 1.) Defendants removed the matter to this Court on February 9, 2024. (*Id.*)

Plaintiffs bring five causes of action against Defendants: breach of insurance contract, breach of the implied covenant of good faith and fair dealing, violation of the Washington Consumer Protection Act (“WCPA”), violation of Washington Revised Code § 48.30.015 (“unreasonable denial of a claim for coverage or payment of benefits”), and bad faith tortious conduct. (Dkt. No. 1-1 at 5–11.) Plaintiffs' claims are premised on the argument that “[b]ecause Defendants failed to communicate the upcoming renewal in the manner prescribed in [Washington Revised Code §] 48.18.290(1)(b) and failed to provide notice of cancellation in the manner prescribed by [Washington Revised Code §] 48.18.290(1)(c), the Policy was renewed by operation of law in accordance with [Washington Revised Code §] 48.18.290(1) and was in full force and effect on August 11, 2023.” (*Id.* at 4.) Accordingly, Plaintiffs move for partial summary judgment “on the question of whether their ASI homeowner’s insurance policy . . . was

in effect at the time of the loss and the question of whether Plaintiff’s loss was a covered loss under the Policy issued by Defendants.” (Dkt. No. 13 at 1.)

Contrastingly, Defendants maintain “there is no question of fact that Plaintiffs affirmatively consented to receive electronic notices” and “no question of fact that Plaintiffs received electronic renewal notices in accordance with the timeliness required by Washington law.” (Dkt. No. 17 at 2.) Accordingly, in their cross motion for summary judgment, Defendants argue that “ASI rightfully denied Plaintiffs’ claim for insurance coverage” and “all of Plaintiffs’ claims for relief against ASI” fail as a matter of law. (*Id.*)

### III DISCUSSION

#### A. Consent to Receive Electronic Notices

Before determining whether the email notices ASI sent in July of 2022 complied with Washington law, the Court must determine whether Plaintiffs’ consent to receive electronic notifications about their insurance policy was effective. Washington “specifically allows an insurer to deliver insurance notices and documents electronically.” *Jackson v. Esurance Ins. Co.*, 412 P.3d 299, 303 (2017). However, Washington Revised Code § 48.185.005(4) provides that “[a] notice or document may be delivered by an insurer to a party by electronic means . . . only if”:

- a) The party has affirmatively consented to that method of delivery and has not withdrawn the consent;
- b) The party, before giving consent, has been provided with a clear and conspicuous statement informing the party of:
  - i. The right the party has to withdraw consent to have a notice or document delivered by electronic means at any time, and any conditions or consequences imposed in the event consent is withdrawn;
  - ii. The types of notices and documents to which the party’s consent would apply;
  - iii. The right of a party to have a notice or document in paper form; and
  - iv. The procedures a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update the party’s electronic mail address[.]

1 Plaintiffs argue that the terms and conditions statement was not “conspicuous” because it was  
2 “hidden behind a hyperlink included in a single line of small text.” (Dkt. No. 22 at 10.) Since a  
3 “user must, without being guided or prompted, choose to click on it,” the statement was not  
4 legally sufficient, Plaintiffs conclude. (*Id.*) Plaintiffs do not cite caselaw in support of this  
5 interpretation. Defendants respond: “the hyperlinked Terms & Conditions setting forth  
6 Plaintiffs’ rights and obligations regarding electronic communications is in blue text and was  
7 clearly visible to the applicant Plaintiff Mr. Hughes at the time he clicked the box to provide  
8 consent and move forward with the registration process.” (Dkt. No. 26 at 5.) Moreover,  
9 Defendants note, courts have consistently found that hyperlink terms and conditions in close  
10 proximity to an electronic acknowledgment are legally enforceable. (*Id.* at 4) (citing *Grant v. T-*  
11 *Mobile USA, Inc.*, No. 2:23-CV-01946-MJP, 2024 WL 3510937, at \*3 (W.D. Wash. July 23,  
12 2024); *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 856 (9th Cir. 2022); *Dohrmann v.*  
13 *Insuit, Inc.*, 823 F. App’x 482, 484 (9th Cir. 2020)).

14       The Ninth Circuit has determined that “clickwrap agreements”—or agreements where  
15 users are presented with contractual terms on a pop-up screen and must check a box stating “I  
16 agree” to proceed—are enforceable if “(1) the website provides reasonably conspicuous notice of  
17 the terms to which the consumer will be bound; and (2) the consumer takes some action, such as  
18 clicking a button or checking a box, that unambiguously manifests his or her assent to those  
19 terms.” *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 856 (9th Cir. 2022). The  
20 requirement of “conspicuousness” thus mirrors the Washington law standard. *See* Wash. Rev.  
21 Code § 48.185.005(4)(b). The Ninth Circuit has determined that “to be conspicuous . . . a notice  
22 must be displayed in a font size and format such that the court can fairly assume that a  
23 reasonably prudent Internet user would have seen it.” *Berman*, 30 F.4th at 856. Courts have  
24



1 consistently found that hyperlinked notice of terms and conditions are enforceable if they are  
2 underlined, capitalized, or bolded and “set off from the surrounding text by brightly colored  
3 front.” *Regan v. Pinger, Inc.*, No. 20-CV-02221-LHK, 2021 WL 706465, \*7 (N.D. Cal. Feb. 23,  
4 2021); *see also Weimin Chen v. Sierra Trading Post, Inc.*, No. 2:18-CV-1581-RAJ, 2019 WL  
5 3564659, \*3 (W.D. Wash. Aug. 6, 2019) (“the word ‘Term’ in the Consent line, which  
6 hyperlinks directly to the TOU, is both capitalized and underlined and thus distinguishable from  
7 the surrounding text”); *Meyer v. Uber Techs., Inc.*, 868 F.3d 66, 78-79 (2d Cir. 2017) (finding  
8 hyperlinks reasonably conspicuous because they were both in blue and underlined); *Berman*, 30  
9 F.4<sup>th</sup> at 857 (“Customary design elements denoting the existence of a hyperlink include the use  
10 of a contrasting font color (typically blue) and the use of all capital letters, both of which can  
11 alert a user that the particular text differs from other plain text in that it provides a clickable  
12 pathway to another webpage.”). Here, the statement is bolded and “set off from the surrounding  
13 text” in bright blue text. *Regan*, 2019 WL 3564659, \*3; (Dkt. No. 19 at 3). The Court therefore  
14 finds it sufficiently “conspicuous” for the purposes of Washington law. *See* Wash. Rev. Code  
15 § 48.185.005(4).

16 Plaintiffs further assert that the terms and conditions statement is not “clear” because it  
17 “fails to clearly identify the types of notices and documents to which any consent applies” and  
18 “states only that it applies to ‘insurance policy documents.’” (Dkt. No. 22 at 10.) The  
19 “ambiguity [of the terms and conditions statement] demonstrates the lack of the clarity  
20 contemplated by [Wash. Rev. Code §] 48.185.005(4)(b),” Plaintiff states. (*Id.*) Defendants  
21 respond: “there is no question that (1) ASI’s above-quoted language provided the requisite notice  
22 that all communications related to the e-policy, including renewal notices, would be sent  
23 electronically and (2) regardless of the language contained in ASI’s Terms & Conditions,  
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1 Plaintiffs were actually aware that they were receiving renewal notices by email.” (Dkt. No. 26  
2 at 6.) Washington law specifies that parties must be informed about “the types of notices and  
3 documents to which the party’s consent would apply.” Wash. Rev. Code § 48.185.005(4)(b).  
4 ASI’s terms and conditions state that by clicking “I agree,” the policy holder is “consent[ing] to  
5 receive insurance policy documents electronically.” (Dkt. No. 19 at 3.) Indeed, the terms and  
6 conditions statement uses the words “insurance policy documents” three times, making it clear  
7 that the “types of notices and documents” contemplated are those that pertain to the signor’s  
8 insurance policy. Wash. Rev. Code § 48.185.005(4)(b). Although the terms and conditions  
9 statement does not provide an exhaustive list of documents one might receive, the term  
10 “insurance policy documents” sufficiently informs a signor of the “type” of document that he or  
11 she is agreeing to receive via email for the purposes of Washington law. *See id.*

12 Finally, Plaintiff asserts that the declaration of Kellie O’Nuallian— ASI’s director of  
13 underwriting—is not admissible and therefore cannot be relied upon to show the specific steps  
14 Plaintiffs took during the sign-up process. (Dkt. No. 22 at 5) (“O’Nuallian’s lack of personal  
15 knowledge also leaves her unable to swear to the statements in her Declaration relating to  
16 specific actions ASI insists Plaintiffs did or must have taken during the sign-up process.”). Nor  
17 can the exhibits appended to the declaration be relied upon, Plaintiffs continue, because ASI  
18 failed to authenticate them. (*Id.* at 6) (“ASI has not presented any evidence that those documents  
19 are what ASI claims they are or represent what ASI claims they represent [and] ASI has also not  
20 made the necessary showing that O’Nuallian has the personal knowledge to testify regarding the  
21 steps Plaintiffs took during the sign-up process[.]”). Defendants respond by pointing out that  
22 “O’Nuallian is familiar with ASI’s relevant policies and procedures related to online applications  
23 and delivery of notices/electronic communications” and “researched and reviewed both the  
24

1 details of the specific Policy at issue and ASI’s applicable policies and procedures.” (Dkt. No.  
2 26 at 6.)

3 “A trial court can only consider admissible evidence in ruling on a motion for summary  
4 judgment.” *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 773 (9th Cir. 2002) (citing Fed. R. Civ.  
5 P. 56(e)). The foundational “requirement of authentication or identification as a condition  
6 precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter  
7 in question is what its proponent claims.” *United States v. Tank*, 200 F.3d 627, 630 (9th Cir.  
8 2000). The proponent of evidence “need only make a prima facie showing of authenticity, as the  
9 rule requires only that the court admit evidence if sufficient proof has been introduced so that a  
10 reasonable juror could find in favor of authenticity or identification.” *Id.* (cleaned up). At  
11 summary judgment, “a proper foundation need not be established through personal knowledge  
12 but can rest on any manner permitted by Federal Rule of Evidence 901(b) or 902.” *Id.* at 774.  
13 The documents at issue are properly authenticated, as O’Nuallian’s detailed testimony  
14 sufficiently supports a finding that the documents are what it is claimed they are. *See* Fed. R.  
15 Evid. 901(b) (providing ten approaches to authentication). Moreover, given her position as a  
16 director of underwriting at ASI, O’Nuallian possesses the requisite personal knowledge to  
17 explain the details of ASI’s policies and procedures. Defendants have made a prima facie  
18 showing of authenticity.

19 Accordingly, there is no genuine dispute of material fact that Plaintiff’s validly  
20 acquiesced to receive policy documents electronically under Washington law.

#### 21 **B. Whether the Notice Satisfied Washington Law**

22 Washington Revised Code § 48.18.2901 provides that insurers “must renew any  
23 insurance policy” unless “[a]t least twenty days prior to its expiration date, the insurer has  
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1 communicated, either directly or through its agent, its willingness to renew in writing to the  
2 named insured and has included in that writing a statement of the amount of the premium or  
3 portion thereof required to be paid by the insured to renew the policy, and the insured fails to  
4 discharge when due his or her obligation in connection with the payment of such premium or  
5 portion thereof.” Defendants assert that “ASI’s disclosures were in full compliance” with  
6 Washington law. (Dkt. No. 17 at 15) (“Plaintiffs decided where they wanted electronic notices  
7 to be sent at the time they obtained the Subject Policy” and “there is no question of fact that ASI  
8 delivered the renewal offer to [Mr. Hughes’ email address] more than twenty days before the  
9 date the policy was due for the renewal payment.”). Therefore, Defendants argue, “the Subject  
10 Policy lapsed and was not active at the time of the residential property fire at issue.” (*Id.* at 18.)

11 Mr. Hughes confirmed receipt of the July 15, 2022, email containing the renewal packet.  
12 (Dkt. No. 18-1 at 9.) The “Renewal Premium Notice” in the packet instructed Plaintiffs to  
13 “please pay the minimum amount due shown below” to maintain their coverage and listed “total  
14 amount due” as \$1,471.00. (Dkt. No. 19-8 at 7.) Thus, the notice came in 61 days before the  
15 renewal deadline and stated the amount required to be paid in order to maintain the policy. (*Id.*)  
16 Accordingly, it complied with Washington law. Although ASI’s system of attaching renewal  
17 notices in lengthy packets is not a paragon of clarity for email recipients, its procedures do not  
18 run afoul of the law. Moreover, insureds in Washington have “an affirmative duty under  
19 Washington law to read their policy and be on notice of the terms and conditions of the policy.”  
20 *Dombrosky v. Farmers Ins. Co. of Washington*, 928 P.2d 1127, 1134–35 (Wash. Ct. App. 1996),  
21 *as amended* (Feb. 7, 1997). Thus, Plaintiffs’ policy validly lapsed when they did not make the  
22 renewal payment.

**IV CONCLUSION**

Accordingly, Defendants' motion for summary judgment (Dkt. No. 17) is GRANTED.  
Plaintiffs' motion for partial summary judgment (Dkt. No. 13) is DENIED.

Dated this 14th day of February, 2025.

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David G. Estudillo  
United States District Judge